

ESTTA Tracking number: **ESTTA434532**

Filing date: **10/07/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Regeneron Pharmaceuticals, Inc.
Granted to Date of previous extension	10/09/2011
Address	777 Old Saw Mill River Road Tarrytown, NY 10591 UNITED STATES
Attorney information	Terrence J. McAllister Ohlandt, Greeley, Ruggiero & Perle, LLP One Landmark Square, 10th Floor Stamford, CT 06901 UNITED STATES trademark@ogrp.com, tmcallister@ogrp.com, jscepanski@ogrp.com Phone:203-327-4500

Applicant Information

Application No	77174310	Publication date	04/12/2011
Opposition Filing Date	10/07/2011	Opposition Period Ends	10/09/2011
Applicant	Argos Therapeutics, Inc. 4233 Technology Drive Durham, NC 27704 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparations, vaccines and biologics for the treatment of cancer, infectious diseases, transplantation and auto-immune diseases
Class 042. All goods and services in the class are opposed, namely: Research and development services for others in the field of human diseases and vaccines

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3451501	Application Date	06/22/2006
Registration Date	06/17/2008	Foreign Priority	NONE

		Date	
Word Mark	ARCALYST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/03/00 First Use In Commerce: 2008/03/00 Injectable pharmaceutical preparations and substances for the treatment of inflammatory diseases and disorders		

Attachments	78980233#TMSN.jpeg (1 page)(bytes) Notice of Opposition-ARCELIS.PDF (11 pages)(306722 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/OGRP-CNR-TJM-JJS/
Name	Terrence J. McAllister
Date	10/07/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 77/174310, ARCELIS
Published in the *Official Gazette* on April 12, 2011

Regeneron Pharmaceuticals, Inc.,

Opposition No.:

Opposer,

vs.

Argos Therapeutics, Inc.,

Applicant.

NOTICE OF OPPOSITION

Regeneron Pharmaceuticals, Inc., a New York corporation, having an office at 777 Old Saw Mill River Road, Tarrytown, New York 10591 (“Opposer”), believes it will be damaged by the issuance of a registration to Argos Therapeutics, Inc. (“Applicant”), a Delaware corporation having an address at 4233 Technology Drive, Durham, North Carolina 27704, for the mark ARCELIS (Application No. 77/174310), filed May 7, 2007, for “Pharmaceutical preparations, vaccines and biologics for the treatment of cancer, infectious diseases, transplantation and auto-immune diseases” in International Class 5 and “Research and development services for others in the field of human diseases and vaccines” in International Class 42. Accordingly, Opposer hereby opposes said mark under provisions of Section 13 of the Trademark Act of July 5, 1946, as amended, 15 U.S.C. §1063.

As grounds for opposition, it is alleged that:

1. Opposer is a biopharmaceutical company that since 1988 has researched, developed, and commercialized medicines for the treatment of serious medical conditions.
2. Opposer has used the trademark ARCALYST in connection with injectable pharmaceutical preparations and substances for the treatment of inflammatory diseases and disorders since March of 2008.
3. Opposer owns U.S. Trademark Registration No. 3451501 for the ARCALYST mark covering “Injectable pharmaceutical preparations and substances for the treatment of inflammatory diseases and disorders” in International Class 5, filed June 22, 2006 and registered June 17, 2008 (referred to herein as “Opposer’s pleaded trademark”). Copies of the registration certificate and “TARR” trademark status printout for Opposer’s aforementioned registration are attached to this “Notice of Opposition”, and Opposer hereby gives formal notice that it will rely on said registration as evidence in this proceeding in accordance with Trademark Rule 2.122(d).
4. Opposer’s registration is valid and subsisting in law and in full force and effect.
5. Opposer claims priority over Applicant’s trademark application since the filing date of Opposer’s pleaded trademark precedes the filing date of Applicant’s trademark application;
6. Opposer’s pleaded trademark is inherently distinctive and serves to identify Opposer’s goods exclusively with Opposer.
7. The mark ARCELIS, which Applicant seeks to register, is confusingly similar to Opposer’s pleaded trademark in sight, sound, overall appearance, and commercial impression, as to be likely, when used on or in connection with the goods and services

covered under Applicant's trademark application, to cause confusion, or to cause mistake, or to deceive consumers and members of the industry into believing that the goods and services covered under Applicant's trademark application originate from, are sponsored by, or are otherwise authorized by Opposer, when, in fact, they are not.

8. Upon information and belief, the goods covered under Opposer's pleaded trademark are highly related to the goods and services covered by Applicant's trademark application.

9. Upon information and belief, the goods and services associated with Applicant's ARCELIS mark will be advertised, marketed, promoted, sold, and shipped through the same channels of trade and will be advertised in the same types of publications and mediums as Opposer's pleaded trademark and sold to the same classes of the purchasing public for use by or on the same consumers as Opposer's goods.

10. Upon information and belief, the goods and services associated with Applicant's ARCELIS mark would be offered to and used by some of the same customers and consumers who would also be in the market for and use the goods associated with Opposer's pleaded trademark.

11. Registration of Applicant's ARCELIS mark would be a source of damage to Opposer because consumers and members of the industry are likely to attribute the source or sponsorship of Applicant's goods and services to Opposer.

12. Registration of Applicant's ARCELIS mark would be a source of damage to Opposer because registration would confer upon Applicant statutory presumptions to which Applicant is not entitled in view of Opposer's priority in regard to the registration of Opposer's pleaded trademark with the USPTO.

CERTIFICATE OF FILING

The undersigned hereby certifies that a copy of the foregoing “Notice of Opposition” was filed electronically through the Electronic System for Trademark Trial and Appeals (“ESTTA”) located on the U.S. Patent and Trademark Office’s website at <uspto.gov> on this 7th day of October, 2011.

/OGRP-CNR-TJM-JJS/

Terrence J. McAllister
ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Notice of Opposition" was served by first-class mail in an envelope addressed to Applicant's correspondence address of record in the Trademark Applications and Registrations Retrieval (TARR) system of the USPTO as follows on this 7th day of October, 2011:

Holly A. Coldiron, Esq.
Hutchison Law Group PLLC
5410 Trinity Rd., Ste. 400
Raleigh, NC 27607-6003

/OGRP-CNR-TJM-JJS/
Terrence J. McAllister
ATTORNEY FOR OPPOSER

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 3,451,501

United States Patent and Trademark Office

Registered June 17, 2008

TRADEMARK
PRINCIPAL REGISTER

ARCALYST

REGENERON PHARMACEUTICALS, INC. (NEW
YORK CORPORATION)
777 OLD SAW MILL RIVER ROAD
TARRYTOWN, NY 10591

FOR: INJECTABLE PHARMACEUTICAL PRE-
PARATIONS AND SUBSTANCES FOR THE TREAT-
MENT OF INFLAMMATORY DISEASES AND
DISORDERS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51
AND 52).

FIRST USE 3-0-2008; IN COMMERCE 3-0-2008.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SN 78-980,233, FILED 6-22-2006.

CHARLOTTE CORWIN, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-10-06 14:40:27 ET

Serial Number: 78980233 Assignment Information Trademark Document Retrieval

Registration Number: 3451501

Mark

ARCALYST

(words only): ARCALYST

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2008-06-17

Filing Date: 2006-06-22

Transformed into a National Application: No

Registration Date: 2008-06-17

Register: Principal

Law Office Assigned: LAW OFFICE 117

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2008-05-14

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Regeneron Pharmaceuticals, Inc.

Address:

Regeneron Pharmaceuticals, Inc.
777 Old Saw Mill River Road
Tarrytown, NY 10591
United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

Injectable pharmaceutical preparations and substances for the treatment of inflammatory diseases and disorders

Basis: 1(a)

First Use Date: 2008-03-00

First Use in Commerce Date: 2008-03-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-06-17 - Registered - Principal Register

2008-05-14 - Law Office Registration Review Completed

2008-05-14 - Assigned To LIE

2008-05-14 - Allowed for Registration - Principal Register (SOU accepted)

2008-05-09 - Statement Of Use Processing Complete

2008-04-21 - Use Amendment Filed

2008-05-09 - Divisional processing completed

2008-04-21 - Divisional request received
2008-04-21 - PAPER RECEIVED
2008-04-17 - Extension 1 granted
2008-04-17 - Extension 1 filed
2008-04-17 - TEAS Extension Received
2007-10-23 - NOA Mailed - SOU Required From Applicant
2007-09-27 - Changes/Corrections After Pub Approval Entered
2007-09-26 - Assigned To Petition Staff
2007-09-14 - FAX RECEIVED
2007-09-08 - Extension Of Time To Oppose Process - Terminated
2007-03-19 - Extension Of Time To Oppose Received
2007-02-20 - Published for opposition
2007-01-31 - Notice of publication
2006-12-29 - Law Office Publication Review Completed
2006-12-29 - Assigned To LIE
2006-12-11 - Approved For Pub - Principal Register
2006-12-07 - Teas/Email Correspondence Entered
2006-12-06 - Communication received from applicant
2006-12-06 - TEAS Response to Office Action Received
2006-11-27 - Non-final action e-mailed
2006-11-27 - Non-Final Action Written
2006-11-27 - Assigned To Examiner
2006-06-28 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Terrence J. McAllister

Correspondent

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